IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Regular First Appeal No. 285 of 2000.

Judgment reserved on 27.11.2007.

Date of Decision: 27 th December, 2007.

H.P. Housing and Urban Development Authority
….. Appellant

Versus
Prem Singh and others ….. Respondents.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Bhupinder Gupta, Sr. Advocate with Mr. Neeraj Gupta and Mr. J.R. Thakur, Advocates.

For the Respondents: Mr. G.D. Verma, Sr. Advocate with Mr. Romesh Verma, Advocate for respondent No. 1.

Mr. M.S. Chandel, Advocate General with Mr. Rajan Dewan, Addl. AG, for respondent Nos. 2 and 3.

Dev Darshan Sud, Judge.

This appeal has been preferred by the Himachal Pradesh Housing and Urban Development Authority against the judgment of the Additional District Judge, Solan, in land Reference No. 2-S/4 of 1997/94 decided on 24.5.2000, dismissing the application filed by the appellant under Section 28-A read with

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

Section 18 (2)-A of the Land Acquisition Act, 1894 (hereafter referred to as the Act) for the determination of the awarded amount.

It is not disputed before me that the entire matter dealing with the award of just compensation was considered by the Hon'ble Supreme in **Ram Piari and another vs. Land Acquisition Collector, Solan (1996) 8 SCC 338**. The same notification which is the subject matter of adjudication in this appeal, was considered by the Hon'ble Supreme Court in detail. RFA No. 350 of 1991 and other connected appeals filed in this court dealing with the award of compensation for land of this very notification were the subject matter of adjudication in Ram Piari's case. The Hon'ble Supreme Court held:-

> "5……..Therefore, the High Court while fixing the uniform rate of compensation to all the lands @ Rs. 7100 per bigha committed error of law in reducing the compensation to the lands classified by the Collector to be Kuhal and Katuhal lands for which compensation @ Rs. 14195 and Rs. 9425 per bigha respectively was offered. The High Court, therefore, in that perspective has committed error of law in reducing the compensation in respect of the above lands. Accordingly, the award of the Collector is restored in respect of the lands classified by him as Kuhal and Katuhal lands."

The judgment concluded:-

> "9. In fact, in this case obviously the development authority accepted the award of the court, acted upon it and issued notice to the purchasers calling upon them to pay the compensation on the basis of the enhanced market value determined by the District Judge. On the

> facts of this case, we think that the development authority having accepted the award, though the State carried the matter in appeal, has succeeded upon principle of law. The development authority is directed to recover the amount and pay the amount so recovered at the rate determined by the court to the respective landowners. We direct that this direction may not be treated to be a precedent. On the facts of this case, we think that the above direction would meet the ends of justice. The appellants are not entitled to additional amount under Section 23 (1-A). They are entitled to solatium @ 30% and interest @ 9% per annum from the date of taking possession for one year and thereafter @ 15% per annum on the enhanced compensation till the date of its deposit into the court."

In these circumstances, learned counsel for the appellant submits that the decision of the Supreme Court having attained finality, the learned Additional District Judge was bound to follow this judgment and could not have dismissed the application of the appellant on technical grounds or on the reasoning adopted by it. He submits that the decision rendered by the Hon'ble Supreme Court is binding on all courts of law and Article 141 of the Constitution of India is peremptory and does not admit of any exception. The decision having been rendered on 12.3.1996, cannot be altered or varied on technical grounds.

Learned counsel for the claimants-respondents submits that the petition filed under Section 28 –A (3) was not maintainable. He submits that in terms of sub section 3 of Section 28-A which reads:-

> **"28-A. Re-determination of the amount of compensation on the basis of the award of the Court**.-
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> (1)……..
>
> (2)……
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> (3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

The petition can only be entertained in case a written application is made to the Collector and the matter is referred by him to the District Judge for redetermination of the amount. In the present case, no such application having been made, the application itself was not maintainable and should have been dismissed on this ground alone. He submits that the principle of statutory interpretation that if the law requires a thing to be done in a particular manner it should be done in that manner or not at all applies to the facts of the present case as the provisions of Section 28-A (3) are mandatory in nature. He relies upon the judgment of this High Court in **Arun Seen *vs*. State of H.P. and others 1994 (1) S.L.J. 666** holding that where the statute require a thing to be done in a particular manner it should be done in that manner or not all. This court held:-

> "21. It is a basic principle of law that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This well

known principle approved and accepted in *Taylor versus Taylor, (1875) I Ch. D 426 and Nazir Ahmed versus Emperor, AIR 1939 Privy Council* 253 has also been followed by the Supreme Court in *Ramchandra Keshav Adke versus Govind Joti Chavre, AIR 1975 SC 915*, and in a recent judgment in *Shiv Kumar Chadha versus Municipal Corporation of Delhi & others, judgments Today, 1993 (3) SC 238."*

To similar effect is the judgment of the Hon'ble Supreme Court in **Ramchandra Keshav Adke *vs.* Govind Joti Chavare and others AIR 1975 SC 915** and **Commissioner of Income Tax, Mumbai *vs.* Anjum M.H. Ghaswala and others (2001) 1 SCC 633**. In nutshell, argument of the learned counsel for the appellant is that the mandatory provisions of Section 28-A (3) have not been followed; the petition itself was not maintainable.

Learned counsel for the appellant submits that the judgment of the learned Additional District Judge does not consider the true controversy and merely reproduces head notes of certain judgments and is contrary to the judgment passed by the Hon'ble Supreme Court determining the just compensation payable for the land subject matter of this appeal. He submits that the judgment of the Hon'ble Supreme Court having been delivered in 1996 every authority was duty bound to have complied and obeyed it without exception.

Article 141 of the Constitution of India mandates that the judgments of the Hon'ble Supreme Court shall bind all courts of law in India. In **Assistant Collector of Central Excise, Chandan**

Nagar, West Bengal *vs.* Dunlop India Ltd. and others (1985) 1 SCC 260, the Court holds:-

> "6…….It is needless to add that in India under Article 141 of the Constitution the law declared by the Supreme Court shall be binding on all courts within the territory of India and under Article 144 all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court."

In **Maj. Genl. A.S. Gauraya and another *vs.* S.N. Thakur and another (1986) 2 SCC 709**, the Hon'ble Supreme Court reiterated and held:-

> "12.When the matter went before the High Court, the decision of this Court referred above must have been brought to its notice, since the order by the Additional Sessions Judge refers to it. We would have been happy if the High Court had considered the matter in some detail especially when its attention was drawn to this decision instead of dismissing the revision in limine. The observations of the Sessions Judge, extracted above, discloses a confusion of thought about the effect of a decision rendered by this Court and a misreading of Article 141 of the Constitution. There is nothing like any prospective operation alone of the law laid down by this Court. The law laid down by this Court applies to all pending proceedings….. ……..
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> 13. The sweep of Article 141 of the Constitution, so far as the judgments of this Court are concerned, came up for consideration before this Court recently in *Shenoy and Co. vs. CTO, (1985) 2 SCC 512,* to which one of us was a party. It is not necessary to refer to the facts of that case, in detail. Suffice it to say that

the contention that the law laid down by his Court in an appeal filed by the State would not bind the other parties against whom the State of Karnataka did not file appeals from a common judgment, was repelled by this Court in the following words *(SCC pp. 521-22, paras 22-23)*

> It is, therefore, idle to contend that the law laid down by this Court in that judgment would bind only the Hansa Corporation and not the other petitioners against whom the State of Karnataka had not filed any appeal. To do so is to ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. Article 141 reads as follows:
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> The law declared by the Supreme Court shall be binding on all courts within the territory of India.
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> A mere reading of this article brings into sharp focus its expanse and its all pervasive nature. In cases like this, where numerous petitions are disposed of by a common judgment and only one appeal is filed, the parties to the common judgment could very well have and should have intervened and could have requested the court to hear them also. They cannot be heard to say that the decision was taken by this Court behind their back or profess ignorance of the fact that an appeal had been filed by the State against the common judgment.
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> * * *
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> To contend that this conclusion applies only to the party before this Court is to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory. But setting aside the common judgment of the High

> Court, the mandamus issued by the High Court is rendered ineffective not only in one case but in all cases……"

In **Suganthi Suresh Kumar *vs.* Jagdeeshan (2002) 2 SCC 420**, court declared that the law pronounced by it is binding on all courts in India till it is overruled by a larger Bench. It is not open to any court to vary the judgment on any grounds whatsoever.

Lastly the decision in **Director of Settlements, A.P. and others *vs.* M.R. Apparao and another (2002) 4 SCC 638** may be noticed. The court held:

> "7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a *ratio decidendi* is an observation by the Court on a legal question suggested in a case

before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional mandates are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court *(see Ballabhadas Mathuradas Lakhani v. Municipal Committee, Malkapur (1970) 2 SCC 267 and AIR 1973 SC 794 (sic)*. When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (*See Narinder Singh v. Surjit Singh (1984) 2 SCC 402 and Kausalya Devi Bogra v. Land Acquisition Officer (1984) 2 SCC 324)*. We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr. Rao in elaborating his arguments contending that the judgment of this Court dated 6.2.1986 (2002) 4SCC 660 cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr. Rao relied upon the judgment of this Court in the case of *M.S.M. Sharma*

> *v. Sri Krishna Sinha AIR 1959 SC 395: 1959 Supp (1) SCR* 806 wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in *Gunupati Keshavram Reddy v. Nafisul Hasan AIR 1954 SC 536 : 1954 Cri LJ 1704* relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law."

There can thus be no doubt that any principle of statutory interpretation must yield to the Constitutional primacy of Article 141. Moreover, if the submission of the learned counsel for the respondents is accepted, it would lead to startling consequences in as much as taking advantage of a technicality, the respondents would be entitled to compensation which is not in consonance with the law laid down by the Hon'ble Supreme Court and thus in effect nullifying the judgment, which course of conduct is taken. In **Union of India vs. Munshi Ram and others (2006) 4 SCC 538** while dealing with the interpretation of Section 28-A of the Act it was held:-

> "7.We are of the view that the Union of India is right in its submission that the amount payable under Section 28-A of the Act is the amount which is finally payable by way of compensation to the owners of the land who challenged the award of the Collector and claimed reference under Section 18 of the Act. The said provision seeks to confer the benefit of enhanced

compensation even on those owners who did not seek a reference under Section 18. It cannot be that those who secure a certain benefit by reason of others getting such benefit should retain that benefit, even though the others on the basis of whose claim compensation was enhanced are deprived of the enhanced compensation to an extent. This would be rather inequitable and unfair. Moreover, even if it be that the compensation payable to claimants who have applied under Section 28-A of the Act, is the enhanced compensation decreed by the Reference Court, we must understand the decree to mean the decree of the Reference Court as modified in appeal by the higher courts. Otherwise, an incongruous position may emerge that a person who did not challenge the award of the Collector and did not claim a reference under Section 18 of the Act would get a higher compensation than one who challenged the award of the Collector and claimed a reference, but in whose case a higher compensation determined by the Reference Court was subsequently reduced by the superior court. There can be no dispute that those claiming higher compensation and claiming reference under Section 18 of the Act are bound by the decree as modified by the superior court in appeal. The principle of restitution must apply to them. For the same reason, the same consequence must visit others who have been given the benefit of enhanced compensation pursuant to the decree passed in reference proceeding on the application of others.

8. It was contended before us that after the order of redetermination was passed, the Union of India could have challenged this order, and since it failed to do so, it lost its right to challenge that order. The submission overlooks the basic plea of the Union of India that at the stage when the order of re determination was

> passed under Section 28-A of the Act that order was fully justified and any further re determination could be claimed only if there was variation of the decree and the amount awarded by way of compensation was reduced. In the instant case, that happened in the year 1997, and therefore, in one sense it was indeed premature for the Union of India to challenge the re determination under Section 28-A in the year 1995, much before the decree was actually modified.
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> 9. We hold that under Section 28-A of the Act, the compensation payable to the applicants is the same which is finally payable to those claimants who sought reference under Section 18 of the Act. In case of reduction of compensation by the superior courts, the applicants under Section 28-A may be directed to refund the excess amount received by them in the light of reduced compensation finally awarded."

Article 141 of the Constitution of India is mandatory and peremptory that the law laid down and declared by the Supreme Court shall be binding on all courts within the territory of India. Article 144 further imposes a duty on all concerned to ensure that all authorities civil and judicial shall act in the aid of the Supreme Court. There can be no manner of doubt that the judgment passed by the learned Additional District Judge cannot be sustained. The law thus having been laid down by the Hon'ble Supreme Court, principles of statutory interpretations have to yield to constitutional primacy of the Hon'ble Supreme Court.

In the facts and circumstances, the appeal filed by the appellant is accepted. The judgment and order passed by the learned Additional District Judge is quashed and set aside and a direction is

issued that the compensation so determined and paid to the claimants-respondents shall be in terms of the judgment passed by the Hon'ble Supreme Court in Ram Piari's case. In case of any excess; the appellant shall be entitled to the refund of the money. There shall be no order as to costs.

27th December, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**